

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMEGA PATENTS, LLC,

Plaintiff,

v.

FIRSTECH, LLC,

Defendant.

C20-1344 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant Firstech, LLC's motion to dismiss, docket no. 11, is STRICKEN without prejudice to refile after the United States Supreme Court issues a decision in Am. Axle & Mfg., Inc. v. Neapco Holdings LLC, No. 20-891. Defendant's motion seeks dismissal as to one of four patents-in-suit, namely U.S. Patent No. 7,305,293 (the "'293 Patent"). The motion challenges patentability, relying on jurisprudence developed under 35 U.S.C. § 101. The Federal Circuit's most recent decision on § 101, Am. Axle & Mfg., Inc. v. Neapco Holdings LLC, 967 F.3d 1285 (Fed. Cir. 2020), is now the subject of a petition for writ of certiorari, which the dissenting member of the panel believes is likely to be granted, see Am. Axle & Mfg., Inc. v. Neapco Holdings LLC, 977 F.3d 1379, 1383 (Fed. Cir. 2020) (Moore, C.J., concurring in the denial of a motion to stay mandate). The petition for writ of certiorari, to which the Supreme Court has requested a response, outlines the questions presented as follows:

1. What is the appropriate standard for determining whether a patent claim is "directed to" a patent-ineligible concept . . . ?

2. Is patent eligibility . . . a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of art at the time of the patent?

Am. Axle & Mfg., Inc. v. Neapco Holdings LLC, No. 20-891, Pet. at i (Dec. 28, 2020). Given the petition's framing of the issues as to which a writ of certiorari is sought, and

1 the arguments on which defendant rests in attacking, and plaintiff relies in supporting,
2 the '293 Patent, the Court concludes that the goals of judicial economy and efficiency
3 will be best served by deferring any ruling on patentability until the Supreme Court
4 resolves the American Axle case.

5 (2) Having reviewed the parties' Joint Status Report, docket no. 18, the Court
6 SETS a five-day jury trial for June 6, 2022. A separate scheduling order will be entered.

7 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record.

9 Dated this 10th day of February, 2021.

10 William M. McCool
11 Clerk

12 s/Gail Glass
13 Deputy Clerk